



FINAL REPORT

Motor Vehicle Fuel Study Committee

January 2006

MEMBERS

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Senator Jack Kibbie, Co-chairperson
Senator Daryl Beall
Senator Steve Kettering

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AUTHORIZATION AND APPOINTMENT

The Motor Vehicle Fuel Study Committee was established by the Legislative Council and charged to “investigate issues relating to the sale of motor vehicle fuel, including minimum markup, selling below cost, and limiting quantities of gasoline.”



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I. Committee Proceedings.

The Committee was authorized to conduct one meeting during the 2005 Interim. The Committee met on Friday, November 4, 2005, in Room 116 of the State Capitol.

II. November 4, 2005, Meeting.

Ms. Dawn Carlson, President, Petroleum Marketers and Convenience Stores of Iowa (PMCI).

Ms. Carlson informed the Committee that PMCI is a trade association representing over 800 small businesses with nearly 2,000 retail outlets. She stressed that these businesses are not owned by any major oil companies; they are customers of these oil companies. She described the contracts governing the purchase of gasoline by retailers, the factors governing how gasoline is priced at wholesale and at retail, and how gasoline is transported to Iowa. The most significant factor affecting the retail price is product replacement costs, meaning that gasoline retailers must set retail prices at a level that will permit them to generate sufficient cash to replace the gasoline sold. Ms. Carlson informed the Committee that Iowa average retail profit margins on the sale of gasoline are among the lowest in the country, which has resulted in a large number of gasoline and convenience store closings and sales. Ms. Carlson briefly discussed mandates as they relate to motor vehicle fuel pricing and to the sale of high ethanol blend gasoline (E-85 gasoline). She provided the Committee with a brief summary of other states' motor fuels fair marketing laws.

Mr. William Brauch, Special Assistant Attorney General, Director—Consumer Protection Division. Mr. Brauch informed the Committee that the Office of Attorney General has taken many complaints from consumers about high retail gasoline prices in the wake of Hurricane Katrina. His division is also investigating one Iowa retailer regarding reports of gasoline quality problems. The division is also investigating the practice of financial institutions blocking amounts in the checking accounts of consumers using debit cards to buy gasoline. In terms of unfair competition laws, Mr. Brauch stated that it is very difficult to prove a violation of the current Iowa statute which prohibits a seller from offering merchandise at a price in one community that is lower than the price at which the seller offers it in another community. Mr. Brauch also stated that the Federal Trade Commission has taken the position that laws that prohibit below-cost pricing are generally anticompetitive and ultimately lead to higher prices for consumers with no countervailing benefit to the marketplace.

Mr. Ron Rowland, Director, Consumer Protection and Animal Health Division, Iowa Department of Agriculture and Land Stewardship. Mr. Rowland stated that his division is responsible for inspecting the more than 34,000 licensed gas pump meters in the state. They are inspected for accuracy, proper labeling in terms of type of fuel and price, and safety. He stated that the department also has a very small fuel quality testing program that collects about 50 samples a year, either as a result of consumer complaint or inspector referral. The department has not taken a stance on unfair competition legislation relating to the sale of motor vehicle fuel. However, if the department is given the task of enforcing such a law, it would need adequate financial and staff resources to implement the law, and the law must be clear and workable so enforcement is not burdensome.

Mr. Thomas Watson, Assistant Vice President, Petroleum Marketing, Hy-Vee, Inc. Mr. Watson stated that Hy-Vee, Inc., operates 29 gas stations in the state of Iowa. This is part of the company's strategy of creating convenient, or one-stop shopping for its customers. The company



is not in favor of minimum fuel pricing laws because they violate the principles of the free market system, and they would cause higher gasoline prices in an already high-priced market. He provided a copy of the Federal Trade Commission's "Request for Comments" on Wisconsin's Unfair Sales Act, wherein the commission stated that minimum markup laws could deter competitive price-cutting and could lead to higher prices for the consumer.

Mr. Mark Nelson, President, Dyno Oil Company, Inc. Mr. Nelson, owner of nine convenience stores serving six counties in northwest Iowa, stated that large retailers use the below-cost sale of gasoline as a loss leader to draw customers from as far as 50 miles away to their stores. They then make up for the loss on the sale of gas by marking up the price of their other products, he said. This negatively affects all small business owners in the area, not just gasoline retailers, and will ultimately increase costs to consumers as competition is eliminated. Mr. Nelson summarized the results of two studies relating to the impact of below-cost pricing and predatory pricing practices on independent businesses. Mr. Nelson also informed the Committee that the state needs to provide incentives to petroleum marketers to sell E-85 gasoline, including a law that will protect them from being forced out of business by other businesses selling gasoline below cost.

Mr. James B. West, Legislative Counsel, Iowa Grocery Industry Association (IGIA). Mr. West stated that the IGIA has 1,100 members, including supermarket chains, independent grocery stores and supermarkets, mass merchandisers, convenience stores, wholesalers, distributors, suppliers, brokers, bottlers, and manufacturers. Because the grocery industry is highly competitive at all levels, quality groceries and products are delivered to Iowans in the greatest variety and at the lowest prices possible, and this is why IGIA members strongly support such a market-driven free enterprise system. Protecting individual competitors from the forces of competition in the marketplace ultimately results in higher prices for the consumer and the loss of the benefits of competition.

Mr. David Smitherman, Spokesperson, American Petroleum Institute. Mr. Smitherman stated that, historically, the institute has opposed legislation that interferes with the free marketplace because adequate protection against unfair or illegal marketing practices currently exists at the state and federal levels. A below-cost sale/minimum markup law will not benefit the Iowa consumer. He stated that gasoline pricing laws in Hawaii, Minnesota, and Wisconsin are being reconsidered by public officials because they fear the laws may have had a negative impact on consumers in those states.

Mr. Douglas Beech, Legal Counsel/Corporate Development/Governmental Relations, Casey's General Stores, Inc. Mr. Beech stated that Casey's, an Iowa-based and founded corporation located in Ankeny, has 353 convenience stores located in Iowa, all of which sell motor fuel, including ethanol blended fuels. Casey's opposes legislation which sets the price or cost of motor fuels because the free market competition should establish motor fuel prices without government intervention. Such laws could have unintended consequences that harm both consumers and motor fuel marketers.

Mr. Jim Mulgrew, CEO of Mulgrew Oil Company and Chairman of Petroleum Marketers and Convenience Stores of Iowa. Mr. Mulgrew stated that Mulgrew Oil Company, a family-owned business founded in 1893, owns and operates three stores in the Dubuque area and supplies approximately 100 more stores in Iowa, Illinois, and Wisconsin. The economics of the motor fuel



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industry are worsening each year because of the continued influx of big-box competitors that use fuel as a loss leader or corporations that use discounts on gasoline to reward customers for purchasing at their location or corporations that have a multitude of locations where they can offset poor locations with ones that are more profitable. Iowa has consistently ranked among the five states with the lowest retail fuel margins over the past five years and it is getting worse, and this is one reason why small retailers of gasoline are failing to survive and why, over time, people will be forced to travel longer distances to get fuel or other supplies. Competition by many small independent retailers has proven to be a very good thing in Iowa, and retailers need to be able to make a reasonable profit on the fuel they sell to stay in business.

III. Committee Discussion.

After brief discussion that revolved around Committee members' desire to learn more about below-cost pricing laws, the Committee chose not to make a formal recommendation to the General Assembly.

IV. Materials Filed With the Legislative Services Agency.

The materials distributed in connection with the Committee are on file with the Legislative Services Agency and may be accessed on the Internet at:

<http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=74>.

1. Handout and testimony of Ms. Dawn Carlson Representing Petroleum Marketers and Convenience Stores of Iowa.
2. Testimony of Mr. Bill Brauch, Director, Consumer Protection Division, Office of Attorney General.
3. Testimony of Mr. Ron Rowland, Director, Consumer Protection and Animal Health Division, and Mr. Steve Pedersen, Bureau Chief, Weights and Measures Bureau, Iowa Department of Agriculture and Land Stewardship.
4. Handouts and testimony of Mr. Tom Watson, Assistant Vice President, Petroleum Marketing, Hy-Vee Corporation.
5. Handout and testimony of Mr. Mark Nelson, President, Dyno Oil Company, Inc.



6. Handout and testimony of Mr. Jim West, Legislative Counsel, Iowa Grocery Industry Association.
7. Testimony of Mr. David Smitherman Representing American Petroleum Institute.
8. Handout and testimony of Mr. Douglas Beech, Manager of Government Relations, Casey's General Stores, Inc.
9. Testimony of Mr. Jim Mulgrew, CEO of Mulgrew Oil Company and Chairman of Petroleum Marketers and Convenience Stores of Iowa.
10. Background information prepared by Ms. Susan Crowley and Ms. Keri Kelsey, legal counsel and committee staff, Legal Services Division of the Legislative Service Agency.

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